IN THE HIGsH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION No.1272/2007 &
CRIMINAL APPLICATION No.1273/2007

Shri Bansilal Champalal Biyani.

- Versus -

Dilip Gangaram Wadhwani and another.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

CORAM : A.P. Lavande, J.
DATE : 28TH June, 2007.

Heard Mr. R.L.Khapre, learned Advocate for the applicant.

In both the applications since issue of law involved is identical and the parties are same, the applications are being disposed of by common order.

The applicant is accused in two criminal cases filed by late Gangaram Wadhwani under Section 138 of Negotiable Instruments Act. During the pendency of the criminal cases, Gangaram Wadhwani expired and the respondent no.1 filed applications in both the cases seeking permission to prosecute the complaints by substituting himself in

place of deceased Gangaram Wadhwani.

The applicant herein also filed applications for dismissal of the complaint. The learned Magistrate rejected the prayer of the applicant and permitted the respondent no.1 to continue the complaint filed by his father. The Revisional Court dismissed the Revision Application filed by the present applicant by common order dated 11/1/07 which is impugned in the present application.

Mr.Khapre, learned counsel for the applicant submitted that the respondent no.1 could not have allowed the respondent no.1 to prosecute the complaint filed against the applicant under Section 138 of Negotiable Instruments Act. He further submitted that in any case, respondent no.1 alone could not have been allowed to prosecute the complaint without other heirs being brought on record when admittedly deceased Gangaram Wadhwani was survived by his wife, two daughters and one son, besides respondent no.1. He further submitted that in the event of conviction of the applicant, the Magistrate is likely to award compensation under Section 357 of Criminal Procedure Code. In such an eventuality, the compensation would be paid only to respondent no. 1 and the other heirs would be excluded from grant of compensation.

Since I am not passing any adverse order against the respondent no.1, I do not deem it necessary to hear the respondent no.1.

Having considered the submission made by Mr.Khapre, I do not find any ground to allow the present application. In so far as the first ground is concerned, in case of death of a complainant in a private criminal case, one of the heirs is entitled to prosecute the complaint against the accused and therefore, the impugned order cannot be faulted on this ground.

In so far as the apprehension regarding the grant of compensation to the respondent no.1 in the event of conviction of the applicant is concerned, I am of the opinion that the same can be taken care of by passing appropriate order. In the event of conviction of the applicant, the Magistrate will have to consider the fact that the original complainant has expired and the complaint is being prosecuted by only one heir when there are other heirs. The Magistrate shall also consider whether he should grant compensation having regard to the fact that the original complainant has expired and the complaint is being prosecuted by one heir. In case the Magistrate decides to grant compensation, he would also consider whether the compensation should be granted in favour of all the

heirs of late Gangaram Wadhwani.

The application is disposed of subject to the above observations.

Judge

VMC